

Service Date: June 7, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER of First Class Limousine)	TRANSPORTATION DIVISION
Service , Inc., Kalispell, Montana, Application)	DOCKET T-99.42.PCN
for a Montana Intrastate Certificate of Public)	ORDER NO. 6481
Convenience and Necessity.)	

PROPOSED ORDER

Appearance

For the Applicant:

Debra D. Parker, Attorney at Law, Crowley, Haughey, Hanson, Toole & Dietrich, P.O.
Box 759, Kalispell, Montana 59903-0759

For the Protestant:

Charles A. Harball, Attorney at Law, 1507 First Avenue West, Suite B, Kalispell,
Montana 59901

Commission Staff:

Robin A. McHugh, Staff Attorney; Wayne Budt, Administrator, Transportation Division

Before:

Bob Rowe, Commissioner and Hearing Examiner

Background

1. On November 23, 1999, the Montana Public Service Commission (Commission) received an application from First Class Limousine Service (FCLS or Applicant) for a Certificate of Public Convenience and Necessity, Class B, authorizing the transportation of passengers in limousine service between all points and places in Montana, with the limitation that transportation movements must originate in Flathead County. (FCLS presently has authority to transport passengers in limousine service between all points and places within Flathead County.) A protest to the application was received from Valet Limousine, Inc. (Valet). Valet has authority

that overlaps, in part, the authority applied for.

2. Following issuance of proper notice, a hearing was held on April 26, 2000 in Kalispell, Montana. At the hearing the parties asked that Commissioner Rowe issue a proposed order. Prior to the hearing, pursuant to § 69-3-12-323, MCA, FCLS asked that the time to issue an order be extended to June 7, 2000. The Commission granted the request. Notice of Commission Action, April 6, 2000.

Summary of Testimony

Testimony of Applicant

3. Don Ziegler, the owner and operator of FCLS appeared and testified in favor of the application. Mr. Ziegler described FCLS, including the vehicles owned and anticipated, the maintenance and service record, the qualifications of drivers and the company safety record. Mr. Ziegler also described the advertising and promotion that FCLS does, and indicated that FCLS attempts to participate in community activities. He said that FCLS has quite a few repeat customers and has experienced increased demand for limousine service. He said that FCLS has been successful financially, makes a profit, but does have the capacity to handle additional business.

4. Mr. Ziegler testified that there is a need for the additional authority applied for. In support he indicated FCLS gets calls to drive around Flathead Lake and to go to Missoula, both trips FCLS cannot make under its current authority. He also said FCLS has received requests to go to Great Falls, Bozeman and Billings. He said FCLS would be able to meet the need for its existing authority and its proposed authority.

5. Mr. Ziegler testified that no other carrier is able to provide the transportation service proposed. In support he said that FCLS is the only limousine service listed in the local telephone book.

Testimony of Shipper Witnesses:

6. Tanya Gersh, an "event professional" who plans parties and weddings appeared and testified in support of the application. As part of her job, Ms. Gersh said she hires limousine services for customers and often uses FCLS. She described her experience with FCLS as "good," and "no problems at all." By contrast, she described her experience with Valet as, "It wasn't as easy[.]" and "I had some troubles with Valet." Specifically, she describes an instance where Valet was late for a scheduled movement. Ms. Gersh admitted that her testimony about Valet

was based on that instance only. Ms. Gersh also testified that she would use the additional service FCLS could offer if this application is granted. She specifically referred to wedding parties that need transportation to outlying counties.

7. Sandra White, a real estate appraiser appeared and testified in support of the application. Ms. White testified that she has used FCLS several times and found the experience "very good." She said that she would consider using the proposed expanded authority to Lincoln County and Lake County. She also speculated that FCLS with expanded authority would be used to transport to other events, as, for example, weddings on Flathead Lake.

8. Dave Rae, owner of KOFI Radio in Kalispell, appeared and testified in support of the application. Mr. Rae testified that KOFI Radio has used FCLS as part of promotions and the experience with FCLS was "great." Mr. Rae also testified that he would anticipate using the proposed expanded authority; for example, he indicated that KOFI has tried to put together a contest where the winner would be transported by limousine to a Grizzly game in Missoula. This could not be done using FCLS because of the limits on its authority. Mr. Rae acknowledged that such a service could be provided by another limousine carrier but said, "I only deal with a local company."

Exhibits:

9. The following exhibits were introduced by the applicant and admitted without objection:

- a. An accounting of reservations from January 1, 1998 to December 31, 1999;
- b. Excerpt from the CenturyTel Yellow Pages; and
- c. Discovery responses.

Testimony of Protestant:

10. Debra Graham, manager of Valet, appeared and testified in opposition to the application. Ms. Graham said she has worked as manager since January 2000. She said that to the best of her knowledge Valet has not turned down a request for service. She said that Valet has two limousines and has the capacity to serve Missoula as well as Flathead County. She indicated that Valet used to station a limousine in Flathead County but ceased doing so because it did not generate enough revenue. She said most of Valet's business originates in Missoula County, but it does serve Flathead County.

11. Responding to FCLS witness Gersh's complaint about Valet's service, Ms. Graham said complaints about Valet are unusual, and the Gersh complaint is the only one of

which she is aware. Responding to the absence of advertising in the CenturyTel phone book, Ms. Graham said that was a mistake, and that Valet had been included in that phone book in the past. She said Valet is in other phone books in northwest Montana and is listed in an 800 number directory. Ms. Graham opined that there is not a lot of growth in out-of-county limousine business and indicated that losing out-of-county service to another company would be "devastating to us." Responding to FCLS witness Ziegler, Ms. Graham said she thinks there is cooperation between limousine companies, that Valet refers customers to other limousine services and that Valet takes referrals from other companies.

Discussion

12. Pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA), the Commission supervises and regulates intrastate motor carrier passenger service. § 69-12-201, MCA. To obtain motor carrier operating authority, a motor carrier must file an application with the Commissioner, which will give notice of the filing and schedule a hearing upon filing of a protest or a request for hearing. § 69-12-321, MCA.

13. Pursuant to § 69-12-323, MCA, the Commission is required to find and determine from the evidence whether public convenience and necessity require authorizing the proposed service. The Commission considers existing transportation service; the likelihood of the proposed service being permanent and continuous 12 months of the year; and the effect of the proposed service on other essential transportation service in the affected communities.

14. The Commission interprets § 69-12-323, MCA, as requiring it to address these issues before granting an application for authority:

- a. Is the applicant fit and able to perform the proposed service?
- b. Does the public convenience and necessity require the authorization of the proposed service?
- c. Can and will existing carriers meet the public need for the proposed service?
- d. Would the proposed service have an adverse impact on existing transportation contrary to the public interest?

15. The Commission makes a threshold determination of whether the applicant is fit, willing and able to provide the service, considering these factors: (1) the financial condition of the applicant; (2) the intention of the applicant to perform the service sought; (3) the adequacy of the equipment the applicant has to perform the service; (4) the experience of the applicant in conducting the service sought; and (5) the nature of previous operations, if there are allegations of illegal operations.

16. The record indicates that the financial condition of FCLS is sound, that it intends to provide the service sought and that FCLS has adequate equipment. In addition FCLS has experience and has been operating successfully since it received its initial authority in 1997. There were no allegations of illegal conduct. The Commission finds that Applicant meets the threshold requirement of fitness to provide limousine service, including the expanded service applied for.

17. In determining public convenience and necessity, the Commission has traditionally followed the analysis of Pan-American Bus Lines Operation, 1 M.C.C. 190 (1936). The question in substance is whether the new operation or service will serve a useful public purpose, responsive to a public demand or need; whether this purpose can and will be served as well by existing lines of carriers; and whether it can be served by applicant with the new operation or service proposed without endangering or impairing the operations of existing carriers contrary to the public interest. 1 M.C.C. 203.

18. The legislature has declared limousine passenger service a public purpose of which there is a public demand or need, subject to the Commission's regulation. Public need must be shown by shipper testimony. In a request for authority to transport passengers by limousine in an area served by carriers with existing limousine authority, the record must demonstrate a need for additional limousine service in the area.

19. The Commission finds that FCLS has made a prima facie showing of need for the additional authority. See Order No. 6428a, para. 34, Docket No. T-96.116.PCN. The Commission further finds that Valet did not demonstrate that it can meet the need as well as FCLS. In addition to the failure of Valet to advertise in the CenturyTel Yellow Pages, Valet does not station a car in Kalispell. The record shows that Valet is a Missoula based company whose primary focus is the Missoula area. Merely having overlapping authority is not sufficient to defeat an application. A protestant must generally show that it can meet the expressed need in a manner substantially equivalent to the applicant. Valet has not made that showing.

Finally, Valet asserted, but did not make the case, that its operations would be impaired and endangered by a grant of the application. The Commission cannot conclude from this record that a grant will endanger Valet contrary to the public interest.

Conclusions of Law

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated.
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.
3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.
4. Applicant has demonstrated a public demand or need for the proposed service.
5. Protestant has not demonstrated that it can meet the need as well as the applicant.
6. A grant of this application would not harm Protestant contrary to the public interest.

Order

NOW THEREFORE IT IS ORDERED that the application of First Class Limousine, Inc., Kalispell, Montana, for a Class B Certificate of Public Convenience and Necessity is granted as follows:

Class B – Passengers in limousine service between all points and places in the State of Montana. Limitation: Transportation movements must originate in Flathead County.

DONE AND DATED this 7th day of June, 2000.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Commissioner, Hearing Examiner

ATTEST:

Kathlene M. Anderson
Commission Secretary
(SEAL)

NOTE: This Proposed Order is a proposal for decision. Each party has the opportunity to file exceptions, present briefs, and request oral

argument before the PSC prior to Final Order. See, Section 2-4-621, MCA. Exceptions and briefs must be filed within 20 days of the service date of this Proposed Order. Briefs opposing exceptions must be filed within 10 days thereafter. Oral argument, if requested, should be requested at or prior to the time of briefing, but no later than the last day to file reply briefs on exceptions. See, ARM 38.2.4803 and 38.2.4804. No transcript of the hearing on this matter has been ordered. If exceptions are filed as to any finding of fact, the party making the exception should provide a transcript and refer to the portions of the transcript which pertain to the exception. Vague assertions as to what the record shows, without citation to the precise portion of the record, may be accorded little attention.